

## Minutes Formal City Council Meeting September 11, 2008

Minutes of the Formal Council Meeting of Thursday, September 11, 2008, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

### COUNCIL PRESENT:

Mayor Hugh Hallman  
Vice Mayor Shana Ellis  
Councilmember P Ben Arredondo  
Councilmember Mark W. Mitchell  
Councilmember Joel Navarro  
Councilmember Onnie Shekerjian  
Councilmember Corey D. Woods

*Mayor Hallman called the meeting to order at 8:10 p.m.*

1. The Tempe Police Department Honor Guard posted the Colors and Councilmember Arredondo gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.
3. **MINUTES**
  - A. Approval of Council Meeting Minutes  
**Motion by Councilmember Shekerjian to approve Items #1 and #4. Second by Vice Mayor Ellis. Motion passed unanimously on a voice vote.**  
**Motion by Vice Mayor Ellis to approved Items #2 and #3. Second by Councilmember Woods. Motion passed 6-0, with Councilmember Shekerjian abstaining.**
    1. Council's Executive Session – August 14 & 16, 2008
    2. Council's Issue Review Session – August 14, 2008 [20080911clrkck01.pdf](#)
    3. Council's Formal Meeting – August 14, 2008 [20080911clrkck02.pdf](#)
    4. Joint Council and Tempe Chamber of Commerce Dinner – August 28, 2008 [20080911clrkck03.pdf](#)
  - B. Acceptance of Board & Commission Meeting Minutes  
**Motion by Vice Mayor Ellis to accept the following COMMITTEE & BOARD MEETING MINUTES. Second by Councilmember Woods. Motion passed unanimously on a voice**

**vote.**

5. Building Code Advisory Board of Appeals – August 5, 2008 [20080911bcab01.pdf](#)
6. Commission on Disability Concerns – August 7, 2008 [20080911cdc01.pdf](#)
7. Committee for Youth, Families and Community – June 16, 2008 [20080911cyfc01.pdf](#)
8. Community Special Events Task Force – August 12 & 26, 2008  
[20080911setf01.pdf](#) [20080911setf02.pdf](#)
9. Development Review Commission – July 29 & August 12, 2008  
[20080911drc01.pdf](#) [20080911drc02.pdf](#)
10. Double Butte Cemetery Advisory Committee – April 16, 2008 [20080911dbc01.pdf](#)
11. Hearing Officer – July 15 & August 5, 2008 [20080911ho01.pdf](#) [20080911ho02.pdf](#)
12. Historic Preservation Commission – June 19, 2008 [20080911hpc01.pdf](#)
13. Human Relations Commission – July 8, 2008 [20080911hrc01.pdf](#)
14. Human Relations Commission – Strategic Planning Committee – July 15, 2008  
[20080911hrc02.pdf](#)
15. Municipal Arts Commission – July 9, 2008 [20080911mac01.pdf](#)
16. Municipal Arts Commission – Grants Review Panel – May 30, 2008  
[20080911mac02.pdf](#)
17. Municipal Arts Commission – Public Art/Art in Private Development Committee –  
May 27, 2008 [20080911mac03.pdf](#)
18. Neighborhood Advisory Commission – May 7 & June 7, 2008 [20080911nac02.pdf](#)  
[20080911nac01.pdf](#)
19. Parks & Recreation Board – May 21, 2008 [20080911prb01.pdf](#)
20. Rio Salado Advisory Commission – June 24, 2008 [20080911rsac01.pdf](#)
21. Transportation Commission – May 13, 2008 [20080911tc01.pdf](#)
22. Transportation Commission – Multi-modal Planning & Project Review Committee –  
June 11 & July 9, 2008 [20080911tc02.pdf](#) [20080911tc03.pdf](#)
23. Transportation Commission – Public Involvement/Marketing Committee – July 7, 2008  
[20080911tc04.pdf](#)
24. Tempe Fire Public Safety Personnel Retirement Board – July 3, 2008

#### 4. REPORTS AND ANNOUNCEMENTS

##### A. Mayor's Announcements

- a. Mayor Hallman stated that one of the most important tasks the Council has is to work with Police Chief Tom Ryff and the men and women of the Tempe Police Department to create policy that keeps the community safe. He commended Chief Ryff for his leadership and the concerted efforts of the entire Police Department working as a mission-oriented team. Crime in Tempe has dropped to its lowest in 22 years. This Council remains committed to providing funding for the recruitment and retention of the very best officers in the nation and will do what it takes to equip those officers with the best tools available in fighting crime. On the morning of July 20<sup>th</sup>, a categorically brutal assault was made on one of our most vulnerable community members, an elderly woman who was alone and preparing to go to church. The Tempe Police Department immediately led a multi-agency investigation that soon crossed the international border to the south. On behalf of his Council colleagues, he expressed deep appreciation for the nonstop dedication by members of the Tempe Police Department and all of the participating agencies to make an arrest. Without the Tempe Police Department's

strong interagency relationships and the resulting cooperation of the U.S. Marshall's service and the Mexican authorities, this arrest might not have occurred so quickly or without incident. The resulting arrest makes clear to offenders and potential offenders that in our community such behavior is not tolerated. The Tempe Police Department, with the assistance of brother and sister public safety members around the State and across the Mexican border, is providing the highest internal and external customer and community service of any city in the nation. The City offers its gratitude and its commensurate support to U.S. Marshall David Gonzales and the members of the Sonora Police Department.

Sgt. Steve Carbajal restated Mayor Hallman's comments in Spanish.

Police Chief Tom Ryff recognized the Mexican law enforcement brothers that assisted in this important task. The culture of law enforcement is rich with tradition, grounded in shared ideas and ideology, loyalty and integrity, and when combined, makes an awesome force. Officers throughout the United States, Mexico and other countries are unified with a common identity—the identity as public safety officials to provide safety and security of our homeland and of the community. One unspoken rule in the law enforcement profession that holds true is that when one police agency calls upon another, they will respond with force to ensure support in the common goal to keep the community safe. A few weeks ago when a very deranged individual, suspect Graham Gravely, committed a violent act against a woman who is recognized as a great community member, a well-respected, law-abiding member of our society, who believed she was safe in the security of her home. After committing this brutal crime, this individual attempted to flee the country to Mexico where he would be safe. He made two drastic mistakes. First, he made a mistake by committing the crime on a Tempe community member. Second, he thought he could evade law enforcement by simply feeling to another country. Through the use of technology, partnership and good old-fashioned police work, our friends in the Mesa Police Department, U.S. Federal Marshal's Office, and the Tempe Police detectives put together their resources and reached out to the Mexican authorities and asked for help. The Sonora State Police Department, the National Institute of Immigration for Mexico, the Puerto Penasco Police Department, and many other members of the fine law enforcement agencies of Mexico immediately responded to the request of the Tempe Police Department and the U.S. Federal Marshall's Office. Mr. Gravely was located, and those who assisted in bringing him back to the State of Arizona are present tonight. He added that he is privileged to stand with a great friend, U. S. Federal Marshall Dave Gonzales. He further reminded everyone present tonight that we are in this together. We were assisted by the community, tips from community members, the press, and the media in bringing this individual to justice.

U. S. Marshall Dave Gonzales added that this case eventually led to the Republic of Mexico and he knew who to call. It wasn't always like that, but it is now. There has

been much said and written about the border between the U. S. and Mexico, but in the law enforcement community, they work as if there is no border. The outstanding relationships they have with Mexico benefit all of us. They helped get a predator off the street, but it isn't just that. They are called daily on traffic accidents, stolen cars, or getting a message to someone in need. It crosses both ways, and it really is something to see after all of these years and all the improvements that have been made. He thanked the Mayor on behalf of the U. S. Marshall's service. This is the first time he has seen our Mexican partners honored. Literally hundreds of our Mexican police officers have been killed in Mexico this year. There is a vicious war going on with the drug cartels fighting for supremacy of their routes. The government has come down hard on drug cartels, and the fellow officers here today are paying for it. Even with that going on, they still respond with any request we have. He thanked the City of Tempe and friends from the Republic of Mexico.

Director of the Sonora State Investigative Police, Fernando Beltran Perez, made comments on behalf of the Mexican officials and added how much he appreciates this recognition. This incident, unlike many others that they have been handled in a routine manner, was not routine. The individual turned out to be a very dangerous person. For them, it was a great feeling of satisfaction and honor to be able to bring this to a successful end. This kind of cooperation has gone on for many years and his office is always making an effort to minimize the clerical and detailed work required in getting these things done, and that is what his portion of this effort was. He congratulated all of those involved in locating this individual and bringing justice and is appreciative of the City's efforts in recognizing not only his office, but the individuals who were in charge of this effort. He also thanked the victim's family for their fortitude and strength in light of the events that happened. He feels much satisfaction in bringing resolution of this case for the family.

The representatives from Mexico were presented plaques as a token of gratitude from the Tempe Police Department and the U. S. Marshal's Office. The plaques cited a quote from Dr. Martin Luther King, Jr., "Injustice anywhere is a threat to justice everywhere."

Mayor Hallman added that the gentlemen from Mexico who helped in this incident and who continue to help us in Mexico literally put their lives at risk every day. Colleagues and friends have been murdered regularly due to their great work in protecting our community from the worst kinds of drug runners and cartel members. These are people who deserve our very great thanks!

B. Manager's Announcements – None.

5. **AGENDA**

All items in these minutes identified with an asterisk (\*) are **public hearing items**. All items listed on

the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

**Motion by Councilmember Shekerjian to approve the Agenda as amended (Items #32, #55, #57, and #63 were removed for separate consideration). Second by Vice Mayor Ellis. Motion passed with a show of hands, 7-0.**

A. Miscellaneous Items

25. Approved the Report of Claims Paid to be filed for Audit for the months of July and August, 2008.

**COMMENTS:** A copy of the detailed claims report may be obtained by contacting the City Clerk's Office.

26. Authorized the appropriation of funds from the Rio East land sale proceeds to CIP No. 6707029, for environmental remediation and infrastructure construction of a four-lot subdivision on 12 acres of City-owned property at Rio Salado Parkway and Hardy Drive (the ELEMENTS at TCA).

**DOCUMENT NAME:** [20080911cdnr01.pdf](#) RIO SALADO MASTER PLAN (0112-07-03)

27. Approved **Contract #2000-63G**, Fourth Addendum to the Hayden Ferry Lakeside, LLC Development and Disposition Agreement to amend the Schedule of Performance.

**COMMENTS:** Hayden Ferry Lakeside LLC is requesting a time extension to the existing schedule of performance, which currently requires that a Certificate of Completion be issued for at least 700,000 square feet of office space (essentially the third office tower), by December 31, 2008. The Fourth Addendum would extend the deadline to June 29, 2012.

**DOCUMENT NAME:** [20080911cdcm04.pdf](#) RIO SALADO MASTER PLAN (0112-07-03)

28. Authorized the engagement of the Calderon Law Offices to provide legal consulting and investigative services.

**COMMENTS:** Expenditures shall not exceed 100,000.

**DOCUMENT NAME:** [20080911casv01.pdf](#) LEGAL AND LEGISLATIVE SERVICES (0500)

29. Approved **with conditions** a Final Subdivision and Condominium Plat for LINCOLN PARK CONDOS located at 1504 West University Drive.

**COMMENTS:** (PL080228) (Eddie Essy, Essy Investments LLC; owner and

Jonathan Sicroff, Sicroff Investments, LLC owner; Drew Wood, DeLorme & Associates, applicant) for a Final Subdivision and Condominium Plat on +/- 1.80 net acres located at 1504 West University Drive in the R-3, Multi-Family Residential Limited District, including the following:

**SBD08023** – Final Subdivision and Condominium Plat to unite two existing parcels, make public right of way dedication and create twenty-six (26) residential condominiums and one common tract.

The following conditions were also approved:

1. Place the Subdivision and Condominium Plat into proper engineered format with appropriate signature blanks. Record the Subdivision and Condominium Plat with the Maricopa County Recorder's Office through the Tempe Development Services Department on or before one year from date of City Council approval (September 11, 2009). Failure to record the plan by one year from date of City Council approval shall make the approval of the Subdivision and Condominium Plat null and void.
2. The owner(s) shall provide a continuing care condition, covenant and restriction (CC&R's) for all of the project's common features, including, but not limited to, the common portions of the building, building and site security lighting, landscape, and all features located in any common area. The CC&R's shall be reviewed by and placed in a form satisfactory to the Development Services Manager and City Attorney. The CC&R's shall be recorded with Maricopa County Recorder's Office prior to final inspection and/or issuance of Certificate of Occupancy.

**DOCUMENT NAME:**      [20080911dskko02.pdf](#)      **PLANNED**      **DEVELOPMENT**  
**(0406)**

30. Approved **with condition** an Amended Final Subdivision Plat for 6<sup>th</sup> & WILSON CUSTOM LOTS located at 430 West 6<sup>th</sup> Street.

**COMMENTS:**      (PL080154) (Joseph Lewis, Sunny Tempe Investments, property owner; Barry Goldstein, Vincent Goldstein Architect, applicant) consisting of an Amended Subdivision Plat on .27 net acres, located at 430 W. 6<sup>th</sup> Street in the R-3, Multi-Family Residential Limited District. The request includes the following:

**SBD08020** – Amended Subdivision Plat to modify the lot lines of Lots 9, 10 and 11 to create three (3) new lots.

The following condition was also approved:

1. An Amended Subdivision Plat for Lots 9, 10 & 11 is required for this development and shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department on or before September 11, 2009. Failure to record the plan within one year of City Council approval shall make the plan null and void.

**DOCUMENT NAME:**      [20080911dsdk02.pdf](#)      **PLANNED**      **DEVELOPMENT**  
**(0406)**

31. Approved **with condition** an Amended Final Subdivision Plat for GREENWOOD APARTMENTS located at 4502 S. Hardy Drive.

**COMMENTS:**      (PL070267) (Jerald Alford, Monarch Group, owner / John Gravatt, Terrascope Consulting LLC, applicant) consists of modification to an existing subdivision plat to combine remnant parcels to the two main properties to conform with previous

conditions of approval for the existing multi-family development of approximately 277,536 s.f., on 16.33 net acres, located at 4502 S. Hardy Drive in the R-3 Multi-Family Residential Limited District. The request includes the following:

**SBD08017** – Amended Subdivision Plat to combine remnant parcels into two main properties and modify water easements for new development.

The following condition was also approved:

1. The Subdivision Plat shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department on or before September 11, 2009. Failure to record the plan within one year of City Council approval shall make the plan null and void.

**DOCUMENT NAME:**      [20080911dsdk03.pdf](#)      **PLANNED**      **DEVELOPMENT**  
**(0406)**

\*32.      **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**

Held a public hearing and **granted an appeal** by the Date Palm Neighborhood Association of the July 8, 2008, Development Review Commission decision to uphold the Hearing Officer's approval of the request by H B TOBACCO located at 53 East Broadway Road for one (1) use permit, **denying the amendment to allow smoking inside the establishment.**

**COMMENTS:**      Appeal by the Date Palm Neighborhood Association (UPA08005) of the July 8, 2008 Development Review Commission decision to uphold the May 20, 2008 Hearing Officer's approval of the request by WALGREENS PLAZA - H B TOBACCO (PL060676) (Steve Stewart, Date Palm Manor, applicant; Anis Ben Harzallah, business owner; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:  
**ZUP08068** Use permit to allow a hookah lounge/tobacco retailer.

City Attorney Andrew Ching summarized that this is an appeal to consider whether or not the use permit should be granted.

Mayor Hallman clarified that the appeal was essentially to deny the use permit. He asked if Council had granted the item, would that not have denied the use permit?

Mr. Ching agreed.

APPLICANT PRESENTATION:

**Steve Stewart**, Date Palm Neighborhood Association, stated that there are three questions for Mr. Harzallah. Why does he want the hookah lounge permit, has he spent more than \$15K as reported in this morning's *East Valley Tribune* attempting to obtain this permit, and how has he been harassed and prejudiced against. He would also ask the Council how many are specifically familiar with the 37 pages of history up to this point. His main question is why the Development Review Commission (DRC) favors granting this hookah lounge permit. In 2007, the State of Arizona became a non-smoking state. The question is either revenue or health. Is revenue more important than moral intent? At this point, it appears to be. Basically, Date Palm Manor

Neighborhood Association hereby requests appeal consideration on the decision issued July 8, 2008, by the DRC based on the following: (1) Arizona is a no smoking state and Tempe is a no smoking city. (2) There have been multiple violations of Tempe City Code Article II, Sec. 22-40/5. (3) All Tempe hookah lounges (six others) are located in school areas. (4) Supposedly, only a flavored light tobacco is used in the hookah. (5) The lounge owner openly stated at the July 8, 2008, DRC meeting that the hookahs were used while homework was being done. This lounge is directly across the street from Tempe High School and will act as a gigantic adolescent magnet at any time of the day, especially in the evening hours. (6) This lounge is also in violation of the distance restriction from a school. (7) The applicant is attempting to infer a grandfather status. (8) The Association knows the health effect of tobacco use and its use is being encouraged with the eighteen-year-olds and their friends. (9) Tempe is a very active community with organizations devoting many hours and millions of nonprofit dollars. By allowing a business to profit by promoting a known health hazard, we may as well increase the school speed zones to 40 mph. Actions outspoke words. (10) Date Palm Manor does not stand alone in this request. The July 8, 2008, meeting was addressed by many other Tempeans with identical concerns. Sometimes governments with good intentions make bad decisions. The mistake is in not correcting the error. They are not asking to put Mr. Harzallah out of business. They are asking not to allow him to extend his business. The logic is there to deny the permit. It's not the complaint of the lounge, it's the complaint of the product being promoted.

Mayor Hallman stated that Mr. Stewart implied that the Council was doing this for revenue. He could think of lots of reasons why someone would approve this that had nothing to do with revenue, such as private property rights, etc.

Mr. Stewart stated that he was attempting to raise a red flag. It was not meant as a personal objection, but rather a social objection.

Mayor Hallman asked for clarification that if Council were to approve this, it is clearly putting peoples' health at stake purely for revenue.

Mr. Stewart clarified that that is what it looked like up to this point. This is not a personal attack, but rather an attempt to think as a government for the betterment of the people. The revenue is the layman's concept of why government doesn't do something.

Mayor Hallman added that, for example, the fact that the City is now being sued for denying a use permit for a tattoo parlor which is costing a significant amount of dollars over and above the revenue that a tattoo parlor brings to the City, in fact, you are telling us that we probably should have voted the other way because we would then have saved the City money.

Mr. Stewart added that he said that for a specific reason to get the government to work together to consider this objectively.

#### RESPONDENT'S PRESENTATION:

**George Ferrin**, Counsel for Anis Ben Harzallah, business owner, stated that Mr. Stewart stated that the 2006 use permit approval had a caveat not to be a hookah lounge. That is not the case. As Council may know, there

was a lot of confusion apparently about whether hookah was smoking for a variety of reasons.

Mayor Hallman asked for clarification on who had the misunderstanding about what constitutes smoking.

Mr. Ferrin responded that Mr. Harzallah did, as well as some members of the City staff because there were other hookah lounges in business without any objections. This pre-dates the June 28, 2007, amendment which finally defined hookah lounges and it pre-dates the prohibition on separation of 1320 feet from a school. That's why he believes staff has recommended that the use permit be affirmed because this use began as a hookah lounge back in 2006 and no one thought they were violating the law then because at the same time Mr. Harzallah would be very careful about making sure that only people 18 or older could get in. The tobacco itself has been maligned here as a known health hazard, however, he presented a package of the hookah mix and on the label it says that "tar is 0" and the nicotine is ".05%." Regular cigarettes are 14% tar. This hookah mix is 1/280<sup>th</sup> of the concentration of a regular cigarette. At one of the hearings, someone mentioned a Mayo Clinic report on the dangers of hookah smoke. That report stated that hookah might be a problem because it is colder smoke which is more tolerable so someone might smoke more, but it was all speculation. It concluded that more study was required. Mr. Stewart confuses 18-year-olds with children. The State legislature has determined that 18-year-olds can smoke if they want to and they are no longer considered children. If HB Tobacco does not have its use permit for the hookah lounge, it could very well go out of business. If it does, what will replace it? Another bar or check-cashing place? Concerning today's newspaper report, the internet version of the report includes comments offered by people at random. There is not one comment that supports removal of the use permit. Every comment supports keeping the use permit in the hands of HB Tobacco. He felt Mr. Stewart's position was basically that hookah smoking will cause a deterioration of children's moral precepts and a fall-off in real estate values. There has been no substantive evidence in any of the hearings that there was any drop-off of real estate values. If we are going to follow Mr. Stewart's vision in this case, then we are going to have to deny the use permits for just about every grocery store and convenience store because they all sell tobacco and alcohol. The criteria for determining whether the use permit should be sustained is summarized in the staff report. It asks whether the use increases vehicle or pedestrian traffic, whether the use emit odors, dust, gas, noise, vibration, smoke, heat or glare? Currently there is no problem with those. Another is whether the use will contribute to neighborhood deterioration or property value reduction. There is no evidence to that regard. The other criteria is whether the use is compatible with the existing nearby structures and uses. In this particular case, HB Tobacco does not reach out with an evil hand. It has gotten along well with the other tenants in the center. He distributed a memorandum to the City Attorney.

Councilmember Mitchell stated that on December 19, 2006, the original request by the owner to have a permit to be a retailer contained eight conditions upon approval. The eighth one states "smoking will not be permitted within this establishment." His understanding is that smoking did occur. A complaint was filed on March 11, 2008, for violation of the conditions of approval.

Mr. Ferrin responded that when the business was first started in 2006, it started as a hookah lounge.

Anis Ben Harzallah responded that when he opened the business, there were six hookah lounges and four restaurants that sold hookah. He was told that hookah was not considered smoking.

Mayor Hallman asked if it was the City of Tempe that told him hookah was not smoking.

Mr. Harzallah responded that one of the City planning staff told him that there was nothing that specified hookah in the Code. That person told him it was now a permit for a hookah lounge. There is a permit for a tobacco store, but hookah can be treated like everything else.

Councilmember Mitchell asked why that condition would be added.

Mr. Harzallah responded that he thought that was a condition only for cigarettes. He had another tobacco store previously at University and Hardy and smoking is allowed inside. At that time there was nothing in the Code about hookah. He followed staff and the Code, and he tried to upgrade.

Mayor Hallman clarified that Mr. Harzallah's view was that hookah is not smoking. When he was at the hearing at which the hearing officer added the condition that smoking would not be permitted, did he have a conversation that he was intending to operate as a hookah lounge, even though the hearing officer raised the issue and sought to exclude smoking of any type? If he tried to exclude smoking of any kind, why wouldn't Mr. Harzallah have made sure it was understood that he intended to open a hookah lounge.

Mr. Harzallah responded that he went to each owner of the restaurants and hookah lounges and talked to them.

Mayor Hallman asked why he didn't say that he intended to open a hookah lounge when he spoke with the hearing officer.

Mr. Harzallah stated that he didn't speak English well at that time and he had brought a lawyer with him. Now he understands well. At that time, his lawyer told him not to worry, that he would function like the other businesses.

Mayor Hallman added that in the City's view, burning tobacco products creates smoke.

Mr. Harzallah stated because the City did not obligate anyone not to smoke hookah in the restaurants, his research got him into trouble. After that, the City corrected it. He would not put all of his money into something that would cause a problem with the City.

Mayor Hallman asked if he has hookah at his tobacco store.

Mr. Harzallah responded that he sells hookah and if the customer wants to try it, they can.

Mayor Hallman asked if he was operating his other store as a hookah lounge.

Mr. Harzallah responded that he is not. It is a tobacco store, but if someone wants to try it, he allows them to try it.

Mayor Hallman asked if that shop has a use permit that doesn't preclude smoking.

Mr. Harzallah responded that it does not preclude smoking. Before he had the problem with Mr. Stewart, he had the problem with the City.

Mayor Hallman added that he sensed that when the hearing officer raised the issue and he answered the question and agreed to a stipulation that there would be no smoking, that maybe the reason he didn't come forward and say that he intended to operate it as a hookah lounge was because he knew at that time there might be a problem.

Mr. Harzallah added that he made his research after that and was told that hookah was not listed in the Code. There is a tobacco retailer license and hookah is not considered smoking. There were six other hookah lounges and there were restaurants that allowed it. They told him he didn't need a use permit to have a hookah lounge. After that, City staff made the correction. He followed whatever rules he was given.

Councilmember Navarro asked what the City did in 2006 when he said he wasn't going to allow smoking. Did the City give warnings?

Mr. Ferrin responded that there was a complaint filed and in response to that, Mr. Harzallah approached the commission, got a zoning opinion and was informed at that time that all he had to do was to apply for the variance. The problem wasn't so much that he had violated the prohibition on smoking in the lounge. The Smoke-Free Arizona Act is confusing. It includes a frequently-asked question section and one question is whether people can smoke in a hookah café or cigar cantina. The answer is yes, so long as it is established that it meets the requirements of a retail tobacco store. That sounds like someone could start a hookah store as a tobacco retail store with smoking.

Mayor Hallman clarified that is where the problem exists. The specific exclusion in the use permit was added by the hearing officer to preclude smoking. Essentially, the law would say someone can smoke there, as long as it is run as a retail tobacco store, so Mr. Ferrin just admitted that the exception in the law was an exception that allows smoking because it is a retail tobacco store.

Mr. Ferrin added that is what Mr. Harzallah was operating—a retail tobacco shop and a hookah lounge.

Mayor Hallman stated that the use permit specifies no smoking.

Mr. Ferrin added that if it says no smoking, the natural reaction would be whether hookah constitutes smoking. Mr. Harzallah answered that in his mind, but he was wrong. That's when the request was made for the new use permit so that he could then run the hookah lounge and retail tobacco store at the same place.

Councilmember Woods stated that this use permit was granted in 2006. The Smoke-Free Arizona Act did not go into effect until May 1, 2007. It seems that wouldn't have anything to do with this use permit which was granted earlier. That is different than Tempe's smoke-free ordinance that was enacted in 2002. His concern is that Mr. Harzallah admits that hookah does contain tobacco, so he doesn't understand how that could not be considered smoking.

Mr. Ferrin responded that it is smoking and it was a violation of the prohibition that the hearing officer set out, but he didn't know that the hearing officer needed to lay that restriction down. He thought that City staff was working on fixing the problem by considering the expansion from being a tobacco retailer to being a tobacco retailer and a hookah lounge.

Mr. Harzallah added that in July of 2007 they made the separation. That was the first time he heard the word hookah in the City. He tried to operate under the rules.

Mayor Hallman appreciated the admissions and honesty and he appreciated Mr. Harzallah's hard work. The difficulty is essentially that Mr. Harzallah made the decision in his mind, but he was wrong. It is smoking and is in violation of the use permit. A number of the facilities mentioned no longer offer hookah and can't offer it. The City found out that hookah was being offered in ways that they did not understand. The fault that City staff might have is that they are not on the coolest side of the universe of human beings and didn't recognize what it was and did not understand what was happening in the culture within Tempe. He appreciates the position Mr. Harzallah is put in. He would entertain a motion to approve the appeal and revoke the use permit.

Mr. Ferrin stated that one of their witnesses that wanted to make a comment had to leave but he filled out a card on which he wrote his comments. The card was presented to the City Clerk.

#### PUBLIC HEARING

**Margaret Christiansen**, Tempe, provided a copy of her letter to Council. She expressed gratitude to the Council for the many long hours its members devote to the important work of governing the City. She and her husband came to Tempe nearly thirty years ago and have considered this to be a good place in which to live and educate their children. The government consists of "We, The People" and the councilmembers are the elected officials to do the citizens' bidding. Some years ago, the children were told to "say no to drugs," and now those children are in high school. Tobacco is a drug, and are we now telling our children that we were wrong when we taught them to "say no to drugs"? She urged Council to not comply to this request to allow a use permit for a hookah lounge/tobacco retailer.

**Bill Butler**, Tempe, stated that he is a small-time landlord and investor. He has five apartment buildings. He has five leases on August 22, and to date, two of those tenants have decided they could not live with the terms of their leases both involving the number of people living in the apartments and the numbers of transients that come and stay overnight. Two of his incomes have been kicked out because they couldn't live up to the terms of their contract. That is what this case is about. The owner had a contract with the City two years ago and now he decides he can't live with that contract. Maybe he will have to find another place to have his business. He urged Council to approve the appeal and deny the use permit.

**Steve Weiner**, Tempe. He is a regular customer at H B Tobacco. He owns three smoke shops in Scottsdale, Tempe and Awahtukee. This is a very nice facility, well-ventilated, the music is not too loud, and the crowd is good. He feels Mr. Harzallah is a good businessman and he urged Council to support him.

**James Cicero**, Tempe, owner of a dry cleaning establishment in the same plaza as H B Tobacco. The

business has not caused any interference with his business or any problems for the plaza. If anything, it might help provide exposure for his business. H B Tobacco presents a very relaxing atmosphere and is a nice gathering place.

**Vinnie Malone**, Tempe, neighbor of H B Tobacco. He has never seen a man work so hard for his business. He has not been aware of any problems with the business. The business is well-run and he is a good man.

**Lee Fairbanks, M.D.**, Tempe. He respects and appreciates the citizens of Tempe. The National Restaurant Association Hospitality Group has stated that Tempe has changed the social norm in America. On the national scene, Tempe was considered the first city with a large college community with the great atmosphere of the celebrations. If Tempe could do it, it would prove nationally that it could be done. Tempe did better than what anyone else is doing, and it can do better on the hookahs than anyone else has done. He has been spreading the Arizona story around the world. Hookah bars are one of the big problems of people trying to get around the law. The problems left are with private clubs where someone can pay a dollar to join so they can allow smoking, or the hookah bars, the electronic gadget cigarettes, and the casinos. The bars are now smoke-free, the restaurants are smoke-free, the stores are smoke-free, the offices are smoke-free, the hospitals have gone beyond smoke-free to smoke-free campuses. Tempe should do better than anyone else and say that there is no hookah smoking.

**Nancy Randall**, Tempe, stated she is concerned because of the high school's proximity. She understands that the hookah lounge plans to expand which will be a magnet for the young people. She referred to an article in the newspaper and cited the Mayo Clinic report which stated that "it is a myth that hookah smoking is safer than smoking cigarettes. This tobacco is no less toxic. Hookah smokers actually inhale more toxic tobacco smoke than do cigarette smokers because of the massive volume of smoke they intake." The article also stated that hookah lounges are coming into the United States fueled by the soaring popularity of hookah smoking among teens and young adults. Mr. Harzallah is a good man, but she is more concerned with our youth.

**Alton Brasher**, Apache Junction, congratulated the Mayor and Council on the Smoke-Free Arizona. Tempe set the standards. Mr. Harzallah's character is not in question here, but rather it is the possibility of getting around the law. In parallel to that, when the Smoke-Free Arizona law passed in May of 2007, there was an exception made for the service clubs. The service clubs were allowed to smoke, as well as the fraternal clubs. He is afraid the same thing will happen with this. If hookah lounges are allowed to come in with a little smoke, then the next time someone will come around the law for something with more smoke. He encouraged the Council to grant this appeal and set an example for the cities around the state.

**Gerald Handertmark**, Mesa. All leaders should be thinking in terms of tightening, rather than loosening, the tobacco laws. There are other non-smoking states now where there is no smoking anywhere. It is time for Arizona to go the same way and close the loopholes in the fraternal organizations and not extend more liberal tobacco-smoking.

**Beverly Alisky**, Tempe. She has lived in Date Palm Manor since 1968. She can look over her back fence at Tempe High. They have approximately two feet between the alley and their back fence and there was marijuana growing there. She started smoking cigarettes when she was 15 years old. A physician described

tobacco as a substitute for overeating and didn't give her the diet pills she wanted. She smoked for 35 years. She grew up in Chicago where there were hookah lounges using water pipes. Flavored tobacco was nice, but they also put 'funny tobacco' in the pipes. She was young and didn't know. We don't want this for our children. They are our most precious possessions.

**Motion by Councilmember Arredondo to approve the appeal and revoke the use permit as requested. Second by Councilmember Mitchell.**

Mayor Hallman asked the applicant for any closing remarks. There were none.

Mayor Hallman stated that it was asserted by the appellee that the City didn't know whether or not smoking of hookah on a premise was considered smoking. He asked if staff was confused on that issue.

Lisa Collins responded that the staff knew when H.B.Tobacco went before the hearing officer that hookah was smoking. Staff had processed a use permit before that for a hookah lounge. It was clear that when there was a condition that said no smoking in the establishment that it meant no smoking.

Mayor Hallman asked if the action taken by staff when they investigated was to issue a notice of non-compliance.

Ms. Collins agreed.

Mayor Hallman clarified that the non-compliance was understood that it was violation of the condition stating that smoking would not be permitted.

Ms. Collins agreed and the applicant asked to come forward and have that condition amended. In their comments about expanding the use, they meant to be asking to remove that condition of no smoking in the establishment.

Mayor Hallman added that staff is recommending both at the commission and the hearing officer, based on staff's determination, that the use could be expanded. It appears, however, that it would, given the timing, require that Council would be creating a variance to the rule of separation for a smoking establishment.

Ms. Collins responded that the case was processed prior to the initial request for the tobacco retailer.

Mayor Hallman clarified that the initial use permit was processed prior.

Ms. Collins agreed. The initial use permit was processed prior to the separation requirement.

Mayor Hallman clarified that it included the obligation not to allow smoking.

Ms. Collins agreed.

Mayor Hallman stated that he was puzzled why anyone thought that removing that preclusion for smoking would not be viewed as allowing smoking at a time that Council had already put into place an ordinance requiring smoking of hookah be separated from schools.

Ms. Collins agreed. Had it been a new application, staff would not have been able to process it, however, this was viewed as an amendment to an original application which was processed prior to the separation requirement. That's why it was allowed to go forward to the hearing officer.

Mayor Hallman clarified that it was purely on the basis that this could be viewed as an amendment and, therefore, grandfathered, but it would still have to be the view of this Council that smoking hookah in this establishment was appropriate.

Ms. Collins agreed.

**Motion passed on a roll call vote, 7-0.**

Mayor Hallman added that he is grateful that there are commissioners that sit through these kinds of hearings. It was ultimately a 4-3 vote to go ahead and grant the application and deny the appeal from the hearing officer. At least one of our commissioners have been here this evening, participating by observing this, and he is grateful for that effort.

**DOCUMENT NAME:**     [20080911dssd01.pdf](#)     **PLANNED     DEVELOPMENT**  
**(0406)**

\*33. Held a public hearing and recommended the approval of a Series 10 Beer and Wine Store Liquor License for 7-Eleven #32265F, 485 West Warner Road.

**COMMENTS:**     Vaneet Sapra, Agent

**DOCUMENT NAME:**     [20080911LIQ02.pdf](#)     **LIQ LIC (0210-02)**

\*34. Held a public hearing and recommended the approval of a Series 6 bar liquor license for CP Aroma LLC dba Aroma Market/Café, 116 West Sixth Street.

**COMMENTS:** Kenneth Losch, Agent

**DOCUMENT NAME:**     [20080911LIQ01.pdf](#)     **LIQ LIC (0210-02)**

**B.     Award of Bids/Contracts**

35. Awarded **Contract #2008-171**, a landscape design services contract with EPG, Inc., for Daley Park improvements.

**COMMENTS:**     Total cost for this contract shall not exceed \$463,819.25.

**DOCUMENT NAME:**     [20080911PWDR02.pdf](#)     **DALEY   PARK   (0706-10)**  
**PROJECT NO. 6305051**

36. Awarded **Contract #2008-172**, three-year contracts with two, one-year renewal options

to Sunbelt Rentals, A to Z Equipment Rental and Sales and Empire Machinery for rental of various types of tools and equipment to supplement the City's inventory.

**COMMENTS:** (RFP 09-021) Total cost for this contract shall not exceed \$150,000 during the initial contract period.

**DOCUMENT NAME:** [20080911fsta02.pdf](#) **PURCHASES (1004-01)**

37. Awarded **Contract #2008-173**, a one-year, limited source contract to Williams & Associates for lobbyist services.

**COMMENTS:** (Limited Source #T09-034-01) Total cost for this contract shall not exceed \$102,000 during the contract period.

**DOCUMENT NAME:** [20080911fslq04.pdf](#) **PURCHASES (1004-01)**

38. Awarded **Contract #2008-174**, three-year contracts with two, one-year renewal options to Global Traffic Technologies and Southwest Traffic Systems for traffic signal pre-emption equipment.

**COMMENTS:** (RFP #09-006) Total cost for these contracts shall not exceed \$500,000 during the initial contract period.

**DOCUMENT NAME:** [20080911fslq05.pdf](#) **PURCHASES (1004-01)**

39. Awarded **Contract #2008-90**, a three-year contract with two, one-year renewal options to Pressure Sensitive Products for decaling transit buses.

**COMMENTS:** (IFB #09-017) Total cost for this contract shall not exceed \$125,000 during the initial contract period.

**DOCUMENT NAME:** [20080911fslq06.pdf](#) **PURCHASES (1004-01)**

40. Awarded **Contract #2008-175**, a twenty-month contract with three, one-year renewal options to Madara Engineering, Inc., for plan review and building inspection services.

**COMMENTS:** (RFP #08-113) Total cost for this contract, along with the previously awarded consultants, shall not exceed \$65,000 during the initial contract period.

**DOCUMENT NAME:** [20080911fslq11.pdf](#) **PURCHASES (1004-01)**

41. Awarded **Contract #2008-176**, a one-year sole source contract to Accela, Inc., (formerly known as Sierra Computer Systems) for software maintenance and support of the Permits Plus system which is utilized by various City departments.

**COMMENTS:** (Sole Source #IT09-037-003) Total cost for this contract shall not exceed \$36,485.79 during the contract period.

**DOCUMENT NAME:** [20080911fst12.pdf](#) **PURCHASES (1004-01)**

42. Awarded **Contract #2008-177**, a construction manager at risk construction phase contract to Felix Construction Company, approved **Contract #2008-178**, a construction management contract with CMX, LLC, and approved a project contingency for the Well No. 13 Equipping Project.

**COMMENTS:** Total cost for the construction services contract is \$580,432.00 and

total cost for the construction management contract is \$41,977.50. The project contingency shall not exceed \$50,000.

**DOCUMENT NAME:** [20080911PWDR01.pdf](#) **WELLS** –  
**CONSTRUCTION/MAINTENANCE (0811-01) PROJECT NO. 3200015**

43. Approved **Contract #2008-179**, a one-year sole source contract renewal with Public Safety Systems Incorporated (PSSI) for annual software system support of the Police Department Computer Aided Dispatch (CAD) system and the Incident / Crime Information System (ICIS).

**COMMENTS:** (Sole Source #IT09-037-004) Total amount not to exceed \$51,710.

**DOCUMENT NAME:** [20080911fsts09.pdf](#) **PURCHASES (1004-01)**

44. Approved a one-year renewal of a contract with Fluoresco Lighting for the purchase, repair and maintenance of traffic sign cabinets and faces.

**COMMENTS:** (T08-045-01) Total amount not to exceed \$80,000.

**DOCUMENT NAME:** [20080911fsta07.pdf](#) **PURCHASES (1004-01)**

45. Approved a one-year subscription renewal with Amigos Library Services for online catalog and inter-library loan services.

**COMMENTS:** (T08-060-01) Total amount not to exceed \$43,100.

**DOCUMENT NAME:** [20080911fsts08.pdf](#) **PURCHASES (1004-01)**

46. Approved the utilization of a City of Phoenix contract with 3M Company for pavement marking tapes and preformed markings for the Public Works Department.

**COMMENTS:** (City of Phoenix RFA 07-120) Total cost of this contract shall not exceed \$35,000.

**DOCUMENT NAME:** [20080911fsta03.pdf](#) **PURCHASES (1004-01)**

47. Approved the utilization of a thirteen-month State of Arizona contracts with CCS Presentation Systems and Troxell Communications for the purchase of audio and video products and services used by various departments for presentations, training and events.

**COMMENTS:** (EPS060125-5 and EPS060125-13) Total amount not to exceed \$100,000.

**DOCUMENT NAME:** [20080911fsts10.pdf](#) **PURCHASES (1004-01)**

48. Request approval to utilize State of Arizona contracts with Bingham Equipment Company; Golf Ventures West; A to Z Equipment Rentals and Sales; Bobcat of Phoenix; Borders Turf & Tractor, Inc.; John Deere Company; E-Z-GO Division of Textron, Inc.; Norstar Industries, Inc.; Quality Equipment & Spray; Horner Group, LLC; Simpson Norton Corporation and Bobcat Company for turf and construction equipment to be utilized by the Public Works Department.

**COMMENTS:** (SCC070014) Total cost of this contract shall not exceed \$250,000.

DOCUMENT NAME: [20080911fsta01.pdf](#) PURCHASES (1004-01)

C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- \*49. Introduced and held the **first public hearing** to amend Chapter 2 of the Tempe City Code relating to Administration by amending Section 2-32 relating to the Establishment of Prosecution Assessment. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911cacc01.pdf](#) TCC CH 2 – CITY CODE ADMINISTRATION (0503-02) ORDINANCE NO. 2008.47

- \*50. Introduced and held the **first public hearing** to amend Chapter 19 of the Tempe City Code relating to Motor Vehicles and Traffic by amending Section 19-142 relating to Parking Without Paying Designated Meter Prohibited. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911cdcm.pdf](#) TCC CH 19 – MOTOR VEHICLES & TRAFFIC (0503-19) ORDINANCE NO. 2008.45

- \*51. Introduced and held the **first public hearing** for an ordinance granting an easement to Southwest Gas Corporation to install and maintain the facilities necessary to provide gas service across a parcel of City-owned property located at approximately 1621 West Rio Salado Parkway. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911PWCH07.pdf](#) EASEMENTS (0904-02) ORDINANCE NO. 2008.38

- \*52. Introduced and held the **first public hearing** for an ordinance abandoning an existing Public Utility Easement and Sewer Easement located at 1240 E. University Drive. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911PWCH05.pdf](#) ABANDONMENT (0901) ORDINANCE NO. 2008.39

- \*53. Introduced and held the **first public hearing** for an ordinance abandoning portions of existing public utility easements located at 222 S. Mill Avenue. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911PWCH06.pdf](#) ABANDONMENT (0901) ORDINANCE NO. 2008.43

- \*54. Introduced and held the **first public hearing** for an ordinance abandoning a portion of an existing alley located at 1000 East Apache Boulevard. **The second public hearing is set for September 18, 2008.**

DOCUMENT NAME: [20080911PWCH09.pdf](#) ABANDONMENT (0901) ORDINANCE NO. 2008.44

- \*55. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**  
Introduced and held the **first public hearing** for a Code Text Amendment for ZONING AND DEVELOPMENT CODE AMENDMENTS. **The second public hearing is set for October 2, 2008**  
**COMMENTS:** (PL080143) (City of Tempe Development Services, applicant) consisting of changes within the development Code, providing reinvestment opportunities in our residential neighborhoods relating to provisions for alternative fence heights in the front yard (Section 4-706), reduced rear and side yard building setbacks when adjacent to an alley (Section 4-202), and time limitations when holding a required neighborhood meeting (Sections 6-401 & 6-402). The request includes the following:  
**ZOA08001 – (Ordinance No. 2008.28)** Code Text Amendment for the Zoning and Development Code Sections 4-202, 4-706, 6-401 and 6-402.

Councilmember Navarro asked for this item to be removed for separate consideration to ask for clarification. The zoning code appears to change from 4 feet in the front yard to an 8 foot fence.

Lisa Collins responded that the request for this particular part of the code amendment is to allow fences greater than 4 feet tall within the front yard setback. It would require a use permit, however. It would go to the hearing officer and it would allow things such as an 8-foot portion of the fence if there were arches, etc., that someone wanted to construct in their front yard. They would go to a public hearing for a use permit.

Councilmember Navarro added that he was concerned with an 8-foot fence up to the front of the property lines when Council is trying to promote friendly neighborhood environment.

Ms. Collins added that in the text it does speak to maintaining natural surveillance to the street and these would be reviewed on a case-by-case basis by the hearing officer and the public would be invited to provide input on each case.

***\*\*FIRST PUBLIC HEARING ONLY, NO COUNCIL ACTION TAKEN. THE SECOND PUBLIC HEARING IS CURRENTLY SCHEDULED FOR OCTOBER 2, 2008.***

DOCUMENT NAME: [20080911dsrl01.pdf](#) ZONING AND DEVELOPMENT CODE (0414-04, 0414-06)

- \*56. Introduced and held the **first public hearing** for a Planned Area Development Overlay for DRURY INN AND SUITES located at 1780 West Ranch Road. **The second public hearing is set for October 2, 2008.**  
**COMMENTS:** (PL070546) (Larry Hasselfeld, Drury Development Corporation, property owner; Dennis Newcombe, Beus Gilbert PLLC, applicant) consisting of an 8 story hotel building, with approximately 124,519 s.f. of building area on 2.96 net acres, located at 1780 West Ranch Road in the PCC-1, Planned Commercial Center Neighborhood and GID, General Industrial Districts, and within the Southwest Tempe

Overlay District. The request includes the following:

**PAD08011 – (Ordinance No. 2008.40)** Planned Area Development Overlay to modify the development standards to allow for a building height increase from 60 feet to 99 feet.  
**DOCUMENT NAME:** [20080911dsac01.pdf](#) **PLANNED DEVELOPMENT (0406)**

\*57. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**

Introduced and held the **first public hearing** for a Zoning Map Amendment and Planned Area Development Overlay for 6<sup>th</sup> & WILSON CUSTOM LOTS, located at 430 West 6<sup>th</sup> Street. **The second public hearing is set for October 2, 2008.**

**COMMENTS:** (PL080154) (Joseph Lewis, Sunny Tempe Investments, property owner; Barry Goldstein, Vincent Goldstein Architect, applicant) consisting of a Planned Area Development for four new lots for three-story custom homes, ranging from 2,000-2,800 s.f. within a 1,114 s.f. building footprint on four 2,800 s.f. lots totaling .27 net acres, located at 430 W. 6<sup>th</sup> Street in the R-3, Multi-Family Residential Limited District. The request includes the following:

**ZON08005 – (Ordinance No. 2008.29)** Zoning Map Amendment from R-3 Multi-Family Residential Limited District to R-1 PAD, Single-Family Residential Planned Area Development District.

**PAD08009** – Planned Area Development Overlay for four new single-family lots with development standards to allow for future custom homes on 2,800 s.f. lots, with a 40-foot building height, 50% lot coverage, 25% landscape area, 5-foot front, side and street side-yard setbacks and a 15-foot rear yard setback.

#### PUBLIC HEARING

**Bill Butler**, Tempe, stated that this project was presented to the Neighborhood Association on the basis that the top 10 feet of the 40 feet will be a covered stairwell to an observation deck. The Association would ask that it be stated such that this last 10 feet of height not be living quarters. They do not wish to have four-story buildings on Wilson.

***\*\*FIRST PUBLIC HEARING ONLY, NO COUNCIL ACTION TAKEN. THE SECOND PUBLIC HEARING IS CURRENTLY SCHEDULED FOR OCTOBER 2, 2008.***

**DOCUMENT NAME:** [20080911dsdk01.pdf](#) **PLANNED DEVELOPMENT (0406)**

#### D. Ordinances and Items for Second Hearing/Final Adoption

\*58. Held the **second** public hearing and approved **with conditions** a Zoning Map Amendment and Planned Area Development Overlay for the **RETREAT AT 1000 APACHE** located at 1000 East Apache Boulevard.

**COMMENTS:** (PL080071) (David Freeman, GNJ Properties LLC, owner; Len Erie, Leonard J. II and Susan M. Erie Trust, owner; City of Tempe, owner; Manjula Vaz,

Gammage & Burnham, applicant) consisting of two five-story mixed use buildings, 67'-0" high, including 124 student housing units with apartment/amenity area of 162,629 s.f. and retail/restaurant area of 4,352 s.f., and one five-level parking garage, 52'-0" high, with area of 96,665 s.f., including one subterranean level. The site is 1.827 gross acres and is located at 1000 East Apache Boulevard in the CSS, Commercial Shopping and Service District. The request includes the following:

**ZON08003 – (Ordinance No. 2008.30)** Zoning Map Amendment from CSS, Commercial Shopping and Service District to MU-4 (PAD) (TOD), Mixed-Use High Density District with a Planned Area Development Overlay and within the Transportation Overlay District.

**PAD08008** –Planned Area Development Overlay to establish development standards to allow a maximum density of 70 dwelling units per acre, maximum building height of 67'-0", minimum building setbacks of 0'-0" at front and side yards, minimum 7'-0" building setback at rear yard, maximum building lot coverage of sixty-four (64) percent, and minimum landscape lot coverage of nineteen (19) percent.

The following conditions were also approved:

1. A building permit shall be obtained on or before September 11, 2010, or the property may revert to the previous zoning designation, subject to a formal public hearing.
2. The property owner(s) shall sign a waiver of rights and remedies pursuant to A.R.S. §12-1134 that may now or in the future exist, releasing the City from any potential claims under Arizona's Private Property Rights Protection Act, which shall be submitted to the Development Services Department no later than October 11, 2008, thirty calendar days after the date of approval, or the Zoning Map Amendment (including the insertion into the Transportation Overlay District and the Planned Area Development Overlay) shall be null and void.
3. The Planned Area Development Overlay for the Retreat shall be put into proper engineered format with appropriate signature blanks and kept on file with the City of Tempe's Development Services Department prior to issuance of building permits.
4. Maximum residential density shall not exceed seventy (70) dwelling units per acre.
5. Maximum building height, as measured from the top of curb adjacent to the center of the front yard of the site, to the highest portion of the roof or parapet of the buildings shall not exceed 67'-0".
6. The increased height exception stipulated in ZDC Sec. 4-205(A) shall be waived for the buildings.
7. The minimum front yard and side yard setbacks shall be 0'-0". The minimum side yard setback of 0'-0" shall apply to the south side yard only. The minimum east and west side yard setbacks shall be no less than 7'-0", except garage ventilation retaining walls shall be no less than 4'-0".
8. The minimum rear setback shall be no less than 7'-0", except garage ventilation retaining walls shall be no less than 4'-0".
9. The maximum building lot coverage shall be no more than sixty-four (64) percent of net site area.
10. The minimum landscape lot coverage shall be no less than nineteen (19) percent of net site area.

**DOCUMENT NAME:** [20080911dskko01.pdf](#) **PLANNED DEVELOPMENT (0406)**

- \*59. Held the **second public hearing** and approved ORDINANCE NO. 2008.33 granting an easement to Salt River Project to install and maintain the facilities necessary to provide electrical service across City-owned property at 230 E. Marigold Lane.

**COMMENTS:** Salt River Project has requested an underground electrical line easement across a portion of City-owned property at 230 E. Marigold Lane (aka parcel

number 132-04-003c). The electrical service is to serve a cell tower located in that area.

DOCUMENT NAME: [20080911PWCH03.pdf](#) EASEMENTS (0904-02)

- \*60. Held the **second public hearing** and approved ORDINANCE NO. 2008.37 abandoning an existing waterline easement located at 911 N. Stadem Drive.

**COMMENTS:** The City of Tempe desires the abandonment of an existing waterline easement described and recorded in Docket 94-0108316. New waterline easements are being provided by the City of Scottsdale that will replace the previously existing easement.

DOCUMENT NAME: [20080911PWCH04.pdf](#) ABANDONMENT (0901)

- \*61. Held the **second public hearing** and approved ORDINANCE NO. 2008.41 authorizing the execution of **Contract #2008-180**, a Development and Disposition Agreement with Wisdom Tree Institute, Inc., an Arizona corporation.

DOCUMENT NAME: [20080911cdcm02.pdf](#) COMMUNITY DEVELOPMENT/REDEVELOPMENT ADMIN (0403-01)

- \*62. Held the **second public hearing** and approved ORDINANCE NO. 2008.42 authorizing the execution of **Contract #2008-181**, a Development Agreement with Meltdown Glass Art & Design, LLC, an Arizona limited liability company.

DOCUMENT NAME: [20080911cdcm01.pdf](#) COMMUNITY DEVELOPMENT/REDEVELOPMENT ADMIN (0403-01)

E. Resolutions

63. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.**

Approved the reconsideration of Resolution No. 2008.67 adopted by the City Council on July 22, 2008, which authorized the Mayor to execute a Development and Disposition Agreement between the City and Centerpoint Holdings, LLC.

**COMMENTS:** At the August 14, 2008, City Council meeting, the Mayor asked that staff place Resolution No. 2008.67 on the September 11, 2008, agenda for reconsideration.

This item was removed at the City Attorney's request so that it can be considered separately.

**Motion by Councilmember Arredondo. Second by Councilmember Mitchell. Motion passed on a roll call vote, 7-0.**

DOCUMENT NAME: [20080911cdcm03.pdf](#) COMMUNITY DEVELOPMENT ADMIN. (0406)

64. Approved RESOLUTION NO. 2008.82 amending City Code Appendix A – Fee

Schedule modifying the Buildings and Building Regulations Fees relating to the development process with a two-tiered fee adjustment.

**DOCUMENT NAME:** [20080911dsnw01.pdf](#) MISCELLANEOUS FEES (0210-05)

65. Approved RESOLUTION NO. 2008.81 authorizing the granting of **Contract #2008-182**, a License Agreement to Sundt Construction Company for use of right-of-way located at McAllister Avenue north of Apache Boulevard.

**DOCUMENT NAME:** [20080911PWCH08.pdf](#) LICENSE AGREEMENT (0505)

## 6. PUBLIC APPEARANCES

### SCHEDULED PUBLIC APPEARANCE

- David Hilton, Scottsdale, re: how parking ordinance is being used. Mr. Hilton did not appear.

## 7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

- Councilmember Arredondo stated that he hoped the City Manager would take time to commend the TEAM security officer, David Ellis, who was prepared to offer first aid at City Hall this week, and to staff on the third floor for their courage in responding to the life-threatening emergency. He also stated that long-time Tempe resident, Rosa Keeme, passed away this past week. She was the founder of Rosita's Fine Mexican Food restaurant. The remembrance of her smile and her attitude that friends and family were the most important things are what we all need to remember. He wished her family a close watch by the good Lord and added that she will be missed, but her smile will not be forgotten.
- Councilmember Mitchell congratulated Vice Mayor Shana Ellis for being the 2008 elected-official recipient of the Brian Mickelson Housing Hero Award for her dedication to the affordable housing efforts in Tempe. He also congratulated Councilmember Arredondo for receipt of a special recognition award from the Via Del Sol. He further congratulated public works staff for their outstanding storm response.
- Councilmember Shekerjian stated that she and Councilmembers Navarro and Woods attended the Valley Forward Awards. The City received an Award of Merit for the site development landscape for the Tempe Center for the Arts, and two Croscordia awards which are the highest honor from Valley Forward. One was received for building and structures for public assembly for the Tempe Center for the Arts, and the other was for livable communities multi-modal transportation and connectivity for the Tempe-In-Motion Program. They were honored to be there to accept the awards. Tempe is good at looking forward to the future and these awards provide validation for that.
- Mayor Hallman congratulated Councilmember Arredondo for being honored by Via Del Sol. He has worked hard in the community and deserves the honor. He also commended Security Officer Ellis and all of the other staff who jumped in and assisted during the emergency situation. Also, two weeks ago there was another version of the storm and the speed with which the entire City organization kicked into gear to provide public safety coverage of all varieties demonstrates the quality of City staff. He further announced that the "Healing Fields" has been created for the fifth year at Tempe Beach Park. He thanked staff members who have helped coordinate that. He further wished former Vice Mayor Hut Hutson a speedy recovery from recent health issues. Also, a

Tempe citizen lost her husband in the attack on 9/11/01, and she is in our thoughts and prayers and we are grateful for her continuing work in the community.

*Meeting adjourned at 10:25 p.m.*

I, Jan Hort, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of September 11, 2008, by the Tempe City Council, Tempe, Arizona.

\_\_\_\_\_  
Hugh Hallman, Mayor

ATTEST:

\_\_\_\_\_  
Jan Hort, City Clerk

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.